

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PUBLIC INTEREST

The following is a listing of raze permit applications filed with the Permit Operations Division of the Department of Consumer and Regulatory Affairs:

Application Date	Address	Lot	Square	Use
March 9, 2009	1828 Central Place, NE	33	4047	1 story single family development
March 18, 2009	4409 Douglas Street, NE	837	5115	2 story single family development

For further information, please contact Mr. Joseph Bembry at the Permit Operations Division via email at Joseph.Bembry@dcra.gov or Ms. Cheryl Randall Thomas, Manager of the Permit Center, at (202) 442-4534.

BOARD OF ELECTIONS AND ETHICS**CERTIFICATION OF ANC/SMD VACANCIES**

The District of Columbia Board of Elections and Ethics hereby gives notice that there is a vacancy in one (1) Advisory Neighborhood Commission office, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 4C04

Petition Circulation Period: **Monday, March 30, 2009 thru Monday, April 20, 2009**

Petition Challenge Period: **Thursday, April 23, 2009 thru Wednesday, April 29, 2009**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

**D.C. Board of Elections and Ethics
441 - 4th Street, NW, Room 250N
Washington, DC 20001**

For more information, the public may call **727-2525**.

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

Certification of Filling Vacancies
In Advisory Neighborhood Commissions

Pursuant to D.C. Official Code §1-309.06(d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections and Ethics "Board" from the affected Advisory Neighborhood Commission, the Board hereby certifies that the vacancies have been filled in the following single-member districts by the individual listed below:

Kobie Nichols
Single-Member District 4D02

Robin Hammond Marlin
Single-Member District 7B05

Richard Evans
Single-Member District 7B06

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA**APPOINTMENTS OF NOTARIES PUBLIC**

Notice is hereby given that the following named persons have been newly appointed as Notaries Public in and for the District of Columbia, effective on or after April 15, 2009.

Comments on these appointments should be submitted, in writing, to Naomi Shelton, Administrator, Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on April 3, 2009. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

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Algood	Robin L.	Mayer Brown LLP 1909 K Street, NW	20006
Ambaye	Genet	Lafayette Federal Credit Union 409 3rd Street, SE, Suite 105	20025
Appelbaum	Joel	Self 7533 Morningside Drive, NW	20012
Aqui	Jason	Citibank 1775 Pennsylvania Avenue, NW	20006
Archer	Darlene R.	Blumenthal & Cordone, PLLC 1700 17th Street, NW, #301	20009
Askew	Megan R.	Hammerman PLLC 5335 Wisconsin Avenue, NW, Suite 440	20015
Bahur	Linda	Alderson Court Reporting 1155 Connecticut Avenue, NW, Suite 200	20036
Brinkman	Kimberley S.	United State Senate Disbursing Office 127 Hart Office Building	20510
Brown- Alsobrooks	Betty	ULLICO, Inc. 1625 I Street, NW	20006
Brown	E. Jerome	Mayer Brown LLP 1909 K Street, NW	20006
Burgess	Dianna	First American Title 1801 K Street, NW, Suite 200	20006
Burness	M.R.	The National Capital Bank of Washington 316 Pennsylvania Avenue, SE	20003
Cofield	Kena M.	Hardie Industries, Inc. 1120 G Street, NW, Suite 770	20005
Cooke	Michele M.	Hunton & Williams LLP 1900 K Street, NW	20006
Copp	Michaiah	Morris, Manning & Martin, LLP 1333 H Street, NW	20005

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Crown	Dorothy C.	Shapiro, Lifschitz and Schram, P.C. 1742 N Street, NW	20036
Cunningham	Andra E.	Federal Communications Commission 445 12th Street, SW	20554
Dana	Lauren R.	Ackerman Legal, PLLC 1025 Connecticut Avenue, Suite 1000	20036
Davis	Gwendolyn R.	Pillsbury Winthrop Shaw Pittman 2300 N Street, NW	20037
Debelie	Chernet W.	Kia Travel Service 1937 14th Street, NW, Suite 301	20009
DeFee	Dustin Brooks	DKM Communications, Inc. 1900 M Street, NW, Suite 800	20036
Deonigi	Danielle M.	ING Clarion Partners 601 13th Street, NW, Suite 700N	20005
Diffie	Darlene R.	Debevoise & Plimpton, LLP 555 13th Street, NW	20004
Emberley	Daniel	Self 1711 Massachusetts Ave., NW, Suite 512	20036
Farley	Rosanna M.	Utility Workers Union of America, AFL-CIO 815 16th Street, NW	20006
Featherston	Ashley N.	Navy Federal Credit Union 9th & M Street, SE, Bldg 218, Ground Floor	20374
Fedor	Thelma L.	Nixon Peabody LLP 401 Ninth Street, NW, Suite 900	20004
Fennell	Alesia S.	MiCash, Incorporated 1101 30th Street, NW	20007
Frazier	Jenifer B.	Cohen, Milstein, Sellers & Toll, PLLC 1100 New York Avenue, NW, 5th Floor, West Tower	20005
Galiano	Susan L.	Paralegal Associates of Washington, Inc. 1001 Connecticut Avenue, NW, Suite 1137	20036

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Gaskins	Collesta Y.	The Chronicle of Higher Education 1255 23rd Street, NW	20037
Gibson	Steven	CorpAssist LLC 1090 Vermont Avenue, NW, Suite 910	20005
Gonzales	Christopher P.	Arnolds & Porter, LLP 555 12th Street, NW	20004
Gonzales	Glenda G.	Citi Smith Barney 1050 Connecticut Avenue, NW, Suite 800	20036
Gregory	Jerome Kirk	Devroux & Purnell Architects/Planners, P.C. 717 D Street, NW, 5th Floor	20004
Grider	Paula L.	Alderson Court Reporting 1155 Connecticut Avenue, NW, Suite 200	20036
Griffith	Karen C.	ING Clarion Partners 601 13th Street, NW, Suite 700N	20005
Harding	Joan A.	M&T Bank 1680 K Street, NW	20006
Hargrove	Beverly L.	Branch Banking & Trust 1909 K Street, NW	20006
Hereford	Carolyn E.	Self 734 Hobart Place, NW	20001
Hines	Michael L.	Mayer Brown LLP 1909 K Street, NW	20006
Holliday, Jr	Richard E.	Richard E. Holliday, Jr., P.C. 1604 Sixth Street, NW	20001
Holmes	Ann E.	District No. 1-PCD, Marine Engineers Beneficial Association, AFL-CIO 444 North Capitol Street, NW, Suite 800	20001
Huggins	Denise M.	We Care Physicals, LLC 1201 Franklin Street, NE, Suite 106	20017
Jackson	Sara Elaine	FairWinds Partners LLC 2122 P Street, NW, #300	20037

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Jeffcoat	Mary A.	National Endowment for the Humanities 1100 Pennsylvania Avenue, NW	20506
Johnson	Roxie L.	Akridge 601 13th Street, NW, Suite 300N	20005
Johnson	Mary E.	Life Stride, Inc. 3005 Bladensburg Road, NE, Lower Level	20018
Kaufmann	Roy L.	Jackson & Campbell, P.C. 1120 20th Street, NW	20036
Kilgalen	Dianna C.	LAD Reporting 1325 G Street, NW, Suite 200	20005
Kobiec	Stephen M.	Mercer 1255 23rd Street, NW, Suite 500	20036
Kwiatek	Aliza L.	DHR LLC 1620 L Street, NW, Suite 620	20036
Lad	Manishaben	BKA Logistics LLC 1629 K Street, NW, Suite 500	20006
Lamberty- Rivera	Kimra A.	PNC Bank 800 Connecticut Avenue, NW	20006
Langston	Wendi E.	F & L Construction, Inc. 1512 Good Hope Road, SE	20020
Lasher	Julia	Jewish War Veterans of the United States of America, Inc. 1811 R Street, NW	20009
Lee	Yong Joo	Small Family Office 2700 Calvert Street, NW, #114	20008
Levine	Shelley K.	Thompson, Loss & Judge, LLP Two Lafayette Plaza, 1133 21st Street, NW, Suite 450	20036
Lo	Calvin	Royal Oak Capital Management, LLC 1101 New York Avenue, NW, Suite 801	20005
Long	Adam	Mayer Brown LLP	

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		1909 K Street, NW	20006
Lopez	Rachel	LAD Reporting 1325 G Street, NW	20005
Madison	Antonio	The UPS Store 455 Massachusetts Avenue, NW, Suite 150	20001
Maynard	Pamela A.	Self 3606 New Hampshire Avenue, NW	20010
McCarthy	Kent E.	U.S. Secret Service 1111 18th Street, NW	20223
McFadden	Angela Bradley	Finnegan, Henderson, Farabow, Garrett & Dunner, LLP 901 New York Avenue, NW	20001
McGreer	Tami L.	Debevoise & Plimpton, LLP 555 13th Street, NW, Suite 1100E	20004
Montgomery	Joseph B.	Court Social Services (DC Courts) 510 4th Street, NW, Suite 214	20001
Morris	Patricia P.	Howrey LLP 1299 Pennsylvania Avenue, NW	20004
Newman	Tiffany M.	Concentric Energy Advisors 1717 Rhonde Island Ave., NW, Suite 630	20036
Oliver	Barbara A.	Department of Homeland Security Office of International Affairs 800 North Capital Street, NW, Suite 300	20002
Oyola-Sepulveda	Jose Ramon	Webster, Chamberlain and Bean 1747 Pennsylvania Ave., NW, Suite 1000	20006
Patterson	Wanda S.	Self 1924 Shepherd Street, NE	20019

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Porter	Marisa N.	Biscayne Contractors, Inc. 1220 12th Street, SE, Suite 130	20003
Prather	Valerie	Lawyers Committee for Civil Rights Under Law 1401 New York Avenue, NW, Suite 400	20005
Randles	Jennifer C.	Jackson Kelly, PLLC 1875 Connecticut Avenue, NW, Suite 1110	20009
Reinhardt	Christopher	AmeriTitle, Inc. 5100 Wisconsin Avenue, NW, Suite 520	20016
Salazar	Susan N.	First Advantage Litigation Consulting 1201 Connecticut Avenue, NW, Suite 250	20036
Samba	Kadija	Garfield Hill Apts 2317 Hartford Street, SE, #B	20020
Shaw	James	Shaw & Associates, PC 7600 Georgia Avenue, NW, Suite 217	20012
Slan	Joshua Evan	First American Title Insurance Company 1801 K Street, NW, Suite 200K	20006
Smith	DeAnna	U.S. Election Assistance Commission 1225 New York Avenue, NW, Suite 1100	20005
Smith	Kevin W.	Royal Oak Capital Management, LLC 1101 New York Avenue, NW, Suite 801	20005
Spencer	Cynthia A.	Jackson Kelly, PLLC 1875 Connecticut Avenue, NW, Suite 1110	20009
Stevens	Darlene L.	TIAA- CREF 1101 Pennsylvania Avenue, NW, Suite 800	20004
Stuart	Catina M.	Dickstein Shapiro LLP 1825 Eye Street, NW	20006
Swanson	Diane Elisa	Akin Gump Strauss Hauer & Feld, LLP 1333 New Hampshire Avenue, NW	20036
Szczepanska	Anna K.	Amtrak 900 Second Street, NE, Suite 101	20002

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Thompson	Helen D.	National Capitol Bank 316 Pennsylvania Avenue, SE	20003
Thrasher	Gerald M.	United State Senate Disbursing Office 127 Hart Office Building	20510
Tiller	Ethyl L.	National Public Radio, Inc. 635 Massachusetts Avenue, NW	20001
Torro	Pamela M.	Sutherland 1275 Pennsylvania Avenue, NW	20004
Traficante	Darlene S.	L.A.D. Reporting 1325 G Street, NW, Suite 200	20005
Turner- Walls	Valerie	Department of Justice/ Drug Enforcement Administrations 800 K Street, NW, Suite 500	20001
Waller	Charlotte R.	Haynes and Boone, LLP 1615 I Street, NW, Suite 800	20006
Washington	Joan	Sonnenschein Nath & Rosenthal LLP 1301 K Street, NW, Suite 600 East Tower	20005
Williams	B.L.	Duplicators 728 Bonini Road, SE	20032
Williams	Nikkia Tyrese	Self 1351 Harvard Street, NW	20009
Williams	Daisy	Department of Human Services General Counsel Office 64 New York Avenue, NE, 6th Floor	20002
Winters	Jean M.	Wannen and Company 1666 K Street, NW, Suite 400	20006
Wright- Martin	Denise	Debevoise & Plimpton, LLP 555 13th Street, NW	20004
Wyckoff	Kimberly M.	Jones Lang Lasalle Americas, Inc. 2000 Pennsylvania Avenue, NW, Suite 3500	20006

**SERVE DC
THE MAYOR'S OFFICE ON VOLUNTEERISM
NOTICE OF FUNDING AVAILABILITY**

2009 Citizen Corps Emergency Preparedness Grant Competition

Serve DC – The Mayor's Office on Volunteerism announces the availability of DC Citizen Corps Emergency Preparedness funds for **grants up to \$75,000**.

Awards will be made to organizations in the District of Columbia to incorporate emergency preparedness activities, exercises, and trainings for potential volunteers in various DC communities. This initiative will support a wide range of program activities that emphasize readiness in the event of natural and man-made disasters in the District of Columbia. Additionally, applicants must propose to coordinate with and aid Serve DC in Emergency Support Function #16 - *Volunteer and Donation Management*, outlined in the District Response Plan. Prior knowledge and/or experience with Emergency Support Function #16 is preferred but not required. However, a willingness to be trained in details surrounding the Support Function is mandatory.

Eligible applicants are organizations currently operating emergency preparedness programs within the District of Columbia. An organization described in Section 501 (c) (4) of the Internal Revenue Code, 26 U.S.C. 501 (c) (4), that engages in lobbying activities is not eligible to apply or act in any type of supervisory role in the program. **Individuals are not eligible to apply.** All eligible applicants must meet all of the applicable requirements contained in the application guidelines and instructions. The Request for Application (RFA) will be released on March 27, 2009 at 9:00 a.m. **The deadline for submission is May 11, 2009 at 5:00 pm.**

Technical assistance sessions schedule is as follows: April 15, 2009 and April 30, 2009 at 441 4th Street NW, Washington, DC, 11th Floor, South. All interested applicants must register and attend the technical assistance session. Please email Regina Moran at regina.moran@dc.gov to RSVP for a training session. Technical Assistance sessions will be posted on our website at www.serve.dc.gov.

Serve DC anticipates awarding up to \$330,000 in DC Citizen Corps Emergency Preparedness grants, not to exceed \$75,000 per grant. The actual number and dollar amount of the awards will depend on the number of approved applications received.

Applications can be obtained from 441 4th Street NW, Suite 1140N, Washington, DC 20001 or our website at www.serve.dc.gov. For additional information please email Regina Moran, Director of the DC Citizen Corps, at regina.moran@dc.gov.

**THE OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
DIVISION OF EDUCATION EXCELLENCE**

PUBLIC NOTICE OF FUNDING AVAILABILITY

Enhancing Education Through Technology (EETT) Grant Program

The District of Columbia Office of the State Superintendent of Education (OSSE) announces funding availability through the Enhancing Education Through Technology (EETT pronounced E2T2) Grant Program authorized through provisions of Title II, Part D of the No Child Left Behind Act of 2001.

The purpose of the Enhancing Education Through Technology (EETT pronounced E2T2) grant is to increase the academic achievement of students through the use of technology. Funds will be awarded to a District of Columbia high-need Local Educational Agency (LEA), eligible local partnership, and/or consortium of LEAs.

For more specific information, applicants should review the eligibility requirements in the Request for Applications (RFA). The RFA is available on the Mayor's Office of Partnership and Grants Development's (OPGD) website, <http://www.opgd.dc.gov/> and the State Superintendent of Education's (OSSE) website, <http://www.osse.dc.gov>.

The deadline for applications is 6:00 pm on Friday, May 1, 2009.

For more information and/or to request an application, please contact by telephone or email:

Carol Wilson
Program Specialist
Office of the State Superintendent of Education
Division of Education Excellence
51 N Street NE
3rd Floor, Suite 3014-D
Washington, DC 20002
carol.wilson@dc.gov
202-741-6481

**THE OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
DIVISION OF EDUCATION EXCELLENCE**

PUBLIC NOTICE OF FUNDING AVAILABILITY

Mathematics and Science Partnership (MSP) Grant Program

The District of Columbia Office of the State Superintendent of Education (OSSE) announces funding availability through the Mathematics and Science Partnerships Grant (MSP) Program authorized through provisions of Title II, Part B of the No Child Left Behind Act of 2001.

The purpose of the Mathematics and Science Partnership (MSP) grant program is to increase the academic achievement of students in mathematics and science by enhancing the content knowledge and teaching skills of classroom teachers. Partnerships between high-need school Local Educational Agencies (LEAs) and the science, technology, engineering, and mathematics (STEM) faculty in institutions of higher education are at the core of these improvement efforts. Other partners may include public schools, private schools, business, and non-profit or for-profit organizations involved in mathematics and science education.

For more specific information, applicants should review the eligibility requirements in the Request for Applications (RFA). The RFA is available on the Mayor's Office of Partnership and Grants Development's (OPGD) website, <http://www.opgd.dc.gov/> and the State Superintendent of Education's (OSSE) website, <http://www.osse.dc.gov>.

The deadline for applications is 6:00 pm on Wednesday, May 6, 2009.

For more information and/or to request an application, please contact by telephone or email:

Carol Wilson
Program Specialist
Office of the State Superintendent of Education
Division of Education Excellence
51 N Street NE
3rd Floor, Suite 3014-D
Washington, DC 20002
carol.wilson@dc.gov
202-741-6481

OFFICE OF VICTIM SERVICES

Executive Office of the Mayor

<http://opgs.dc.gov>**Notice of Funding Availability****District Opportunities**

FY 2009 Recovery Act-Crime Victim Assistance Grant Program (VOCA). *The Office of Victim Services* announces the availability of grant funds under the fiscal year 2009 Recovery Act-Crime Victim Assistance Grant Program to respond to the emotional and physical needs of crime victims; assist primary and secondary victims of crime to stabilize their lives after a victimization; assist victims to understand and participate in the criminal justice process in the District of Columbia; and provide victims of crime with a measure of safety and security. Eligible applicants are non-profit, community-based organizations and/or District government agencies located in the District of Columbia. The Request for Applications (RFA) will be available electronically beginning **Wednesday, April 1, 2009**. The deadline for applications is **3:00 p.m. on Wednesday, April 15, 2009**. For more information, contact Daniza Figueroa, Program Manager, Office of Victim Services at (202) 442-4936 or daniza.figueroa@dc.gov

FY 2009 Recovery Act S*T*O*P Violence Against Women Formula Grant Program. *The Office of Victim Services* announces the availability of grant funds under the fiscal year 2009 Recovery Act STOP (Services*Training*Officers*Prosecutors) Violence Against Women Formula Grant Program to encourage the development and strengthening of effective, victim-centered law enforcement, prosecution, and court strategies to combat violent crimes against women, and to develop and enhance victim services that address violence against women in the District of Columbia. Eligible applicants are non-profit, community-based organizations and/or District government agencies located in the District of Columbia. The Request for Applications (RFA) will be available electronically beginning **Wednesday, April 1, 2009**. The deadline for applications is **3:00 p.m. on Wednesday, April 15, 2009**. For more information, contact Bryan Criswell, Program Manager, Office of Victim Services at (202) 727-5047 or bryan.criswell@dc.gov.

Victim Assistance Fund (VAF). *The Office of Victim Services* announces the availability of grant funds under the fiscal year 2010 Victim Assistance Fund to sustain and/or expand the provision of direct services to victims of violent crime. Eligible applicants are non-profit, community-based organizations and/or District government agencies located in the District of Columbia that provide direct services to crime victims. The Request for Applications (RFA) will be available electronically beginning **Friday, April 17, 2009**. The deadline for applications is **3:00 p.m. on Monday, May 18, 2009**. For more information, contact Daniza Figueroa, Program Manager, Office of Victim Services at (202) 442-4936 or daniza.figueroa@dc.gov

Crime Victim Assistance Grant Program (VOCA). *The Office of Victim Services* announces the availability of grant funds under the fiscal year 2009 Crime Victim Assistance Grant Program to improve the treatment of victims of crime by providing victims with the assistance and services necessary to speed their restoration after a violent criminal act, and to support and aid them as they move through the criminal justice process in the District of Columbia. Eligible applicants are non-profit, community-based organizations and/or District government agencies located in the District of Columbia. The Request for Applications (RFA) will be available electronically beginning **Friday, April 17, 2009**. The deadline for applications is **3:00 p.m. on Monday, May 18, 2009**. For more information, contact Daniza Figueroa, Program Manager, Office of Victim Services at (202) 442-4936 or daniza.figueroa@dc.gov

S*T*O*P Violence Against Women Formula Grant Program. *The Office of Victim Services* announces the availability of grant funds under the fiscal year 2009 STOP (Services*Training*Officers*Prosecutors) Violence Against Women Formula Grant Program to encourage the development and strengthening of effective, victim-centered law enforcement, prosecution, and court strategies to combat violent crimes against women, and to develop and enhance victim services that address violence against women in the District of Columbia. Eligible applicants are non-profit, community-based organizations and/or District government agencies located in the District of Columbia. The Request for Applications (RFA) will be available electronically beginning **Friday, April 17, 2009**. The deadline for applications is **3:00 p.m. on Monday, May 18, 2009**. For more information, contact Bryan Criswell, Program Manager, Office of Victim Services at (202) 727-5047 or bryan.criswell@dc.gov.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17852 of Ok Y. Cho, pursuant to 11 DCMR § 3103.2, for a use variance from 11 DCMR § 350.4, to allow the establishment of a nail salon business in the R-5-B District at premises 3413 Wisconsin Avenue, N.W. (Square 1914, Lot 40).¹

HEARING DATE: December 9, 2008

DECISION DATE: December 9, 2008

DECISION AND ORDER

This application was submitted on July 16, 2008 by Ok Y. Cho (“Applicant”), the operator of the business located at the property for which the use variance is sought, 3413 Wisconsin Avenue, N.W. (“subject property”). With the authorization of the owner of the subject property, the Applicant requested that the Board of Zoning Adjustment (“Board” or “BZA”) grant a use variance to allow the use of the basement level of the subject property as a commercial establishment.

The Board held a public hearing on the application on December 9, 2008, and at the close of the hearing, voted, 4-0-1 to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated July 18, 2008, the Office of Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office of Planning, the D.C. Department of Transportation, Advisory Neighborhood Commission (“ANC”) 3C, the ANC in which the subject property is located, the member for Single Member District 3C06, and the Council Member for Ward 6. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register* and on September 18, 2008, mailed such notice to the Applicant, ANC 3C, and all owners of property within 200 feet of the subject property.

Requests for Party Status. ANC 3C was automatically a party to this application. There were no requests for party status.

¹This application was originally advertised in the alternative for either special exception relief pursuant to §§ 3104 and 2003.1 or for a use variance pursuant to §§ 3103 and 350.4. Since the latter is the correct relief, the caption has been changed to reflect only the variance request.

BZA APPLICATION NO. 17852**PAGE NO. 2**

Applicant's Case. The Applicant did not appear at the hearing, but was represented by the owner of the subject property and the owner's personal representative. The owner's representative presented the case and tried to explain how the application met the use variance test.

Government Reports. The Office of Planning ("OP") filed a report with the Board on December 2, 2008 recommending denial of the use variance, based on its determination that the application failed to meet any of the three prongs of the variance test.

ANC Report. ANC 3C did not file a report with the Board.

FINDINGS OF FACTThe subject property

1. The subject property is located at address 3413 Wisconsin Avenue, N.W., in an R-5-B zone district.
2. The subject property is improved with a 3-story row dwelling constructed in 1925, which is a contributing building to the Cleveland Park Historic District.
3. The subject row dwelling has a basement level accessible at grade at the front of the building, which is where the commercial use for which relief is being requested would be located.
4. The row dwelling is located in the center of the block and in the center of a line of dwellings, sharing a party wall with the adjacent dwelling on either side.
5. At the rear of the row dwelling is a 15-foot wide public alley.

The proposed use

6. The Applicant proposes to operate a commercial nail salon in the basement of the subject row dwelling.
7. The Applicant is not proposing any exterior modifications to the subject building, but commercial uses are not permitted in R-5-B districts, necessitating the use variance requested herein. See, 11 DCMR § 350.4.
8. The subject basement has been used as a commercial space for approximately 10 years under the auspices of various home occupation permits, at least some of which were issued for a nail salon business.
9. At least some of the home occupation permits appear to have been issued erroneously because the property was not the principal residence of the operator of the business to whom they were issued. See, 11 DCMR § 203.2.

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10. The Applicant operated a nail salon at the subject property from approximately December, 2005 to May, 2007, when it was shut down for violations of the Zoning Regulations.
11. The Applicant was issued a temporary Certificate of Occupancy (“C of O”) for a nail salon in order to allow her to continue operating while her application for a use variance was pending before the Board.
12. Prior to the issuance of the Applicant’s temporary C of O, no C of O for a nail salon use had ever been issued for the subject property.

The Variance Test*There is no exceptional condition of the property*

13. The subject property is essentially the same size and shape as the other properties in the same line of row dwellings, as is the subject dwelling itself.
14. Other row dwellings in the line with the subject dwelling share the same attribute of a basement accessible at grade.
15. There is no undue hardship in using the property in compliance with the Zoning Regulations
16. There is no restriction in the Zoning Regulations on the number of residential units permissible within a dwelling in an R-5-B zone district.
17. The basement is 18 feet wide by 36 feet long, with an area of approximately 650 square feet, and includes a kitchen, a full bathroom, and adequate heating facilities.
18. There is no off-street parking requirement for the subject dwelling, but it does provide two parking spaces in its rear, accessed from the rear alley. See, 11 DCMR § 2100.5.

There would be a substantial detriment to the zone plan

19. The R-5-B district within which the subject property is situated is flanked to the north by an R-5-A district, to the south by an R-5-D district, and to the east by an R-1-B district, the latter of which is a much more restrictive district than the other three.
20. There is a C-1 district directly across Wisconsin Avenue from the subject property, which allows commercial uses such as the nail salon proposed by the Applicant. See, 11 DCMR § 701.1(c).

CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where “by reason of exceptional narrowness, shallowness, or

BZA APPLICATION NO. 17852**PAGE NO. 4**

shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition” of the property, the strict application of the Zoning Regulations would “result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property....” D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. The “exceptional situation or condition” of a property can arise out of the structures existing on the property itself. See, e.g., *Clerics of St.Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). Relief can be granted only “without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.” D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2.

A showing of “practical difficulties” must be made for an area variance, while the more difficult showing of “undue hardship,” must be made for a use variance. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case is requesting a use variance, therefore, she had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in an “undue hardship” to the Applicant. Lastly, the Applicant had to show that the granting of the variance will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The District of Columbia Court of Appeals (“DCCA”) has interpreted “undue hardship” to mean that a property cannot be put to any use for which it can be reasonably adapted. See, *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). (“A use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations.”) See also, *Bernstein v. D.C. Bd. of Zoning Adjustment*, 376 A.2d 816, 819-820 (D.C. 1977) (“[I]t must be shown that strict application of the Zoning Regulations would preclude the use of the property for any purpose to which it may be reasonably adapted.”)

Although there is a history of commercial use in the subject basement space, it appears that such use has been permitted through home occupation permits. The subject property is not the principal residence of the Applicant, making the Applicant ineligible to receive such a permit. See, 11 DCMR § 203.2. The proposed use is therefore disallowed on the property and a use variance is necessary. This application, however, fails to satisfy any of the prongs of the use variance test.

Neither the property nor the row dwelling on the property is beset with any exceptional conditions or unusual circumstances. They are essentially the same as all the other properties and dwellings in the row. Nor is there any undue hardship to the property owner demonstrated here. The basement level of the subject property could reasonably be adapted to the residential use permitted in the zone. The Applicant could incorporate the basement into the rest of the dwelling. The Applicant could alternatively choose to treat it as a separate unit since multiple dwellings are permitted in this R-5-B district. The basement is large enough to be a separate dwelling unit, and it is fitted out with a kitchen, full bath, and heating equipment. The basement level lends itself to residential use as it has an on-grade entrance in the front of the building.

BZA APPLICATION NO. 17852**PAGE NO. 5**

Lastly, the R-5-B district wherein the subject property is situated allows a variety of types of residential uses, but does not allow commercial uses. *See*, 11 DCMR § 350. Across Wisconsin Avenue from the subject property is a C-1 zone where such uses are permitted. *See*, 11 DCMR § 701.1(c).

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. The Office of Planning recommended denial of the application and the Board agrees. ANC 3C did not file a report with the Board concerning the application, therefore there is nothing for which the Board to accord great weight.

For all the reasons set forth above, the Board concludes that the Applicant has failed to satisfy the burden of proof with respect to an application for a use variance from § 350.4, pursuant to § 3103.2. Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: **4-0-1** (Marc D. Loud, Mary Oates Walker, Shane L. Dettman and
Michael G. Turnbull to deny; Ruthanne G. Miller recused herself)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member has approved the issuance of this order.

FINAL DATE OF ORDER: MARCH 20, 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17891 of Judith A. Smith, pursuant to 11 DCMR § 3104.1, for a special exception to allow a partial third story addition to an existing one-family row dwelling under section 223, not meeting the lot occupancy (section 403), and nonconforming structure provisions (subsection 2001.3), in the R-4 District at premises 1381 F Street, N.E. (Square 1029, Lot 189).

HEARING DATE: March 17, 2009

DECISION DATE: March 17, 2009 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. ANC 6A submitted a report in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 223. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

BZA APPLICATION NO. 17891

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Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit Nos. 7 & 22 Plans) be **GRANTED**.

VOTE: **4-0-1** (Marc D. Loud, Shane L. Dettman, Ruthanne G. Miller and Anthony J. Hood to Approve. Mary Oates Walker not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: March 18, 2009

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS.

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SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17897 of Ellen Opper-Weiner, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception from the lot occupancy provisions (sections 403 and 2001.3¹) under section 223, to construct a second story addition to an existing accessory garage and a variance from the accessory structure height requirements under 2500.4, in the R-4 District at premises 223 10th Street, S.E. (Square 944, Lot 36).²

HEARING DATE: March 17, 2009

DECISION DATE: March 17, 2009 (Bench Decision)

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register and by mail to Advisory Neighborhood Commission (ANC) 6B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B filed a report dated February 11, 2009, indicating that it took no position on this application (Exhibit 24). The Office of Planning (OP) submitted a report in support of the requested special exception but not in support of the variance relief (Exhibit 33). Two letters of support from neighbors were submitted for the record (Exhibits 9 and 31). A letter of opposition was also submitted (Exhibit 22).

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to §§ 3104.1 and 3103.2, for special exception under section 223 and 2001.3 and for a variance from subsection 2500.4. Based upon the record before the Board and having given great weight to the OP and ANC report filed in this case, the Board concludes that the applicant has met the burden of proving under

¹ At the hearing, the Board added subsection 2001.3 to the relief advertised and granted for a Special Exception under section 223.

² A use variance to allow living quarters in the accessory structure under subsection 2500.5 was requested in the application, as advertised. At the hearing, the Board found that variance relief pursuant to subsection 2500.5 was unnecessary and the application was amended to drop the request for a variance under subsection 2500.5.

BZA APPLICATION NO. 17897

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11 DCMR §§ 3103.2 and 2500.4, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 3103.2, 223 (403 and 2001.3), and 2500.4, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 10 – Plans) be **GRANTED**.

VOTE: **4-0-1** (Shane L. Dettman, Ruthanne G. Miller, Marc D. Loud, Anthony J. Hood, to APPROVE. Mary Oates Walker, not participating, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: March 19, 2009

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, STATUS AS A VICTIM OF AN INTRAFAMILY OFFENSE, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING**

Z.C. Case No. 09-04

**(Map Amendment @ Square 930, Lots 10, 14, 17, 800, 801, 804, 816, 817, 823, and
828)**

March 19, 2009

THIS CASE IS OF INTEREST TO ANC 6B and 6D

On March 13, 2009, the Office of Zoning received an application from ICP Partners Potomac 810 LLC (the "Applicant") for approval of a map amendment for the above-referenced property.

The property that is the subject of this application consists of Square 930, Lots 10, 14, 17, 800, 801, 804, 816, 817, 823, and 828 in Southeast Washington, D.C. (Ward 6) facing Potomac Avenue, S.E., between 8th and 9th Streets, S.E., and wrapping around 9th and L Streets, S.E. The property is currently zoned ES/C-3-A. The Applicant proposes a map amendment to rezone the property to C-3-A.

The property is currently under the jurisdiction of the Eighth Street Southeast Neighborhood Commercial Overlay District ("ES"), which limits the density and height of any building to 3.0 FAR and 45 feet, respectively. The Applicant is requesting a rezoning to remove the subject property from the jurisdiction of the ES, in order to be able to construct a mixed-use development with additional height and density.

For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-35**

Z.C. Case No. 07-35

(Consolidated PUD – Sheridan Redevelopment LLC + D.C. Housing Authority)

November 10, 2008

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on June 26, 2008 to consider an application from the D.C. Housing Authority and Sheridan Redevelopment LLC (collectively, the “Applicant”) for review and approval of a consolidated planned unit development (“PUD”) and related map amendment, for Lots 61-66 in Square 5869, Lots 49-56, 131-135, 940, 956, 958, 961, 963, 965, 967, 969, 971, and 972 in Square 5872, located on a site in the Hillside neighborhood of Anacostia, pursuant to Chapter 24 and § 102, respectively, of the District of Columbia Municipal Regulations (“DCMR”), Title 11, Zoning. The public hearing was conducted in accordance with the contested case provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application subject to the specified conditions.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On December 31, 2008 the Applicant submitted an application to the Zoning Commission for a consolidated PUD and a related map amendment from the R-5-A Zone District to the R-5-B and C-2-A Zone Districts. The application and supplemental submissions requested approval of architectural plans and site plans depicting 344 dwelling units, including a 104 unit apartment building, 68 stacked townhome units, 116 townhouses, and 56 units in 14 four-story walk-up buildings (each having four units).
2. Sheridan Redevelopment LLC is a partnership between William C Smith & Co., Union Temple CDC, and the Jackson Investment Co. The land is owned by the D.C. Housing Authority and William C Smith & Co. The D.C. Housing Authority property will be ground-leased to Sheridan Redevelopment LLC upon completion of the construction of the project.
3. At its public meeting on February 21, 2008, the Commission voted to schedule a public hearing on the application, and to waive the hearing fee for the portion of the project that was to receive a government housing subsidy.
4. The Office of Zoning received the Applicant’s Pre-Hearing Statement on February 27, 2008 and a supplemental submission, including revised architectural plans on June 6, 2008.
5. A description of the proposed development and the Notice of Public Hearing were published in the *D.C. Register* on April 18, 2008. The Notice of Public Hearing

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was mailed to all property owners within 200 feet of the subject property, as well as to Advisory Neighborhood Commissions (“ANC”) 8A and 8C.

6. The parties in the case were the Applicant and ANCs 8A and 8C. The northern portion of the PUD site is located within the border of ANC 8C, and the southern portion of the site is located within ANC 8A. Accordingly, both ANCs are “affected” for purposes of receiving great weight as required by § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135; D.C. Official Code § 1-309.10(d)).
7. After proper notice, the Commission opened and completed the public hearing on June 26, 2008. At the conclusion of the public hearing, the Commission requested supplemental information and analysis from the Applicant, which was received on July 24, 2008.
8. The Commission took proposed action to approve the application on September 8, 2008, but conditioned its approval on the receipt of further information from the Applicant and left the record open to receive that information. The Applicant submitted this requested information on September 29, 2008.
9. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated September 25, 2008, found that the proposed PUD would not have an adverse effect on federal interests nor be inconsistent with the Comprehensive Plan for the National Capital.
10. The Commission took final action on November 10, 2008 to approve with conditions the application and plans that were submitted into the record.

The Site and Area

11. The property that is the subject of this Order consists of approximately 12 acres of land area (296,793 square feet) in the Hillside neighborhood of Anacostia. The site fronts on Sheridan Road, S.E., between Pomeroy Road and Howard Road, S.E. It is bisected by Sayles Place, S.E., Bowen Road, S.E., Stanton Rd., S.E., and Douglas Road, S.E. The site is a rolling hillside that changes in grade of approximately 70 feet of grade from north to south, rising from Sheridan Road to the top of the site and 10 to 20 feet of grade across the site. The property is identified as Lots 61-66 in Square 5869, Lots 49-56, 131-135, 940, 956, 958, 961, 963, 965, 967, 969, 971, and 972 in Square 5872 (the “PUD Site”).

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12. The PUD site is currently zoned R-5-A which generally permits low density residential development including multi-family residential to a maximum height of 40 feet and a maximum density of 0.9 FAR.
13. The apartment buildings formerly constituting the Sheridan Road public housing development have been demolished, and the PUD Site is currently vacant.
14. The area surrounding the PUD Site is generally developed with a mix of row dwellings and garden apartments. Properties to the east and west of the PUD Site are generally zoned R-5-A and properties adjacent to the site on the north are zoned C-2-A.

The PUD Project and Zoning Flexibility Requested

15. The Applicant testified that it plans to develop the PUD Site with 344 dwelling units, including 104 units in an apartment building with ground-floor, community-serving, flex space; 68 stacked townhome units; 116 townhouses; and 56 units in 12 four-story walk-up buildings (each having four units). The overall goal is to create a stable, mixed-income residential community, with the emphasis on affordable housing. Approximately 110 units (32%) will be in the low-income range, 119 units (35%) will be in the moderate-income range and 115 units (33%) will be market rate. In addition, the development will encourage and provide homeownership opportunities. Approximately 47% of the units will be for sale.
16. The site plan is described as follows. The apartment building fronts on Sheridan Road on the westernmost portion of the site closest to the Anacostia Metrorail Station. It will contain 104 residential units, ground floor flex space (as described in further detail below) and an underground parking garage. This parcel (Lots 62-65, Square 5869) is proposed to be rezoned to C-2-A. The remainder of the site will be rezoned to R-5-B. It will contain 240 residential units with a total of nine unit types to include stacked townhouses, traditional townhouses and four unit walk-up buildings. Along Sheridan Road, the units will be arranged in "U" shaped mews with the four-unit walk-up buildings fronting on Sheridan Road and the townhouses arranged along the arms of the "U." The inside of the "U" is devoted to a landscaped courtyard and parking area. The interior of the site will be developed with groups of stacked townhouses located along interior roadways. Three tot lots and additional landscaped, green space are also provided, as well as new sidewalks to facilitate ease of walking to the Anacostia Metro station.
17. The height and density of the apartment building, 65 feet and 2.8 respectively, are within the C-2-A PUD standards (i.e., 65 feet and 3.0). The maximum lot occupancy and side yards for the apartment building, 85% and 6 feet, require flexibility from the 60% and 10.83 feet requirements of the C-2-A standards.

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18. The height of the single family units will range from 45 feet for the traditional townhouses to 55 feet for the stacked townhouses. The four-unit walk-ups are approximately 55 feet high. All of these proposed building heights are within the 60-foot building height allowed in R-5-B with a PUD. Lot occupancy varies on the individual townhouse lots with a maximum of 71.6% lot occupancy, requiring flexibility from the allowed 60%t lot occupancy in the R-5-B Zone District.
19. A total of 263 off-street parking spaces will be provided to include 63 spaces in an underground garage for the apartment building, one space for each traditional townhouse (116 spaces total) and one space for each two units in the stacked townhouses and four-unit walk-ups (84 units total).
20. The "Site Access and Impact Analysis" dated May 30, 2008 prepared by O. R. George & Associates, Inc., indicated that: *[T]he proposed development can be accommodated without any appreciable adverse traffic impacts on the local area. The study area roadway network currently operates within the City's planning standards, would continue to do so upon build-out of the proposed development.*
21. Because of the PUD site's severe topography, the housing project previously located there had serious problems with stormwater run-off and flooding. To address these challenges, the Applicant retained a team of consultants to design an appropriate stormwater management system, and strategy for dealing with soil conditions. (Applicant's July 30, 2008 submission.) The Applicant will install an entirely new stormwater management system, intended to capture the first half inch of rainfall that falls within a 24-hour period, through use of Filtera, Baysaver, and sand filter systems throughout the site, and the use of permeable pavers where practical and possible. In addition the project uses native landscaping to prevent erosion and run-off. (Applicant's pre-hearing statement.)

Public Benefits and Project Amenities

22. The application offers the following public benefits and project amenities and other statements of compliance with the PUD Evaluation Standards set forth in 11 DCMR § 2403.
 - (a) The PUD project is a new, high-quality, mixed-income residential community. The revitalization plan features a housing mix tailored to homeowners and renters with a wide spectrum of incomes.
 - (b) The PUD project is directly in furtherance of specific public plans and policies, including expanding the area's housing supply and affordable housing for families and housing tenure diversity.

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- (c) The development plan exhibits attractive urban design, new landscaping and environmental improvements. A new street network will be created, and a balanced mixture of housing types and densities are proposed according to planning principles.
- (d) The site plans, landscape plans and architectural plans exhibit a high quality of urban design and environmental features.
- (e) The project includes 5,000 square feet community meeting space and flexible social service space (“flex space”) on the ground floor of the multi-family building for community related use. A portion of the flex space will be set aside for meeting space for residents of Sheridan Terrace and the larger community, this portion of the space will be furnished and made available free of charge. The remainder of the flex space will be reserved for one or more of the following uses:
- Health, Wellness, and Environmental related uses
 - Fitness and Exercise related uses
 - Arts or culture related uses
 - Computer and/or technology space

The final programming for the flex space will be made with input from the Sheridan Terrace Steering Committee and the surrounding community. (Exhibit 70, Attachment 2.)

- (f) Eighty-nine of the 104 units of the multi-family building will be reserved for and affordable to residents at or below 60% AMI. One hundred twenty-five out of the 240 units will be reserved for and affordable to residents at or below 80% of AMI. (Exhibit 70, Attachment 3.)
- (g) The multi-family building also includes a green roof/recreation space and on-site secured bike parking. (Exhibit 70, Attachment 3.)
- (h) All units will be Energy Star compliant. (Exhibit 70, Attachment 3.)
- (i) The project includes a green roof terrace. The project will achieve LEED ND, and LEED for Homes Certification. The project will include Low Impact Development practices. (Exhibit 70, Attachment 3.)
- (j) The project includes three playgrounds/tot lots; native landscaping; a new stormwater management system with low impact development practices; and a new natural stone wall along Sheridan Road. (Exhibit 70, Attachment 3.)

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Consistency with the Comprehensive Plan

23. The PUD is not inconsistent with the *Comprehensive Plan for the National Capital* (the “Plan”). The Site is one of the designated Neighborhood Enhancement Areas in the Plan. The guiding philosophy in the Neighborhood Enhancement Areas is to ensure that new development “fits in” and responds to the existing character, natural features and existing/planned infrastructure capacity. New housing is encouraged to improve the neighborhood. The PUD helps carry out numerous goals and objectives regarding the development of housing and affordable housing in the District of Columbia.
24. The scale of development and the proposed R-5-B and C-2-A zoning are fully consistent with the “Moderate Density” land use designation on the 2006 Future Land Use Map of the Plan.

Office of Planning Report

25. By report dated June 19, 2008 and by testimony at the public hearing, OP recommended approval of the Application with the condition that no retail uses be allowed on the apartment building site. OP stated that the development will accommodate residents with a variety of incomes as well as family sizes and would allow residents of the former development to return to the site with a significant improvement in accommodations.
26. OP stated that the project conforms to the recommendations of the Comprehensive Plan, including the Future Land Use Map and the Generalized Policy Map Neighborhood Enhancement Area designation.
27. OP cited public benefits including affordable housing, urban design and architecture, preservation of natural site topography, extensive landscaping, stormwater management, LEED features, and First Source employment and Certified Business Enterprise commitments.

Reports of Other Agencies

28. The D.C. Department of Transportation (“DDOT”), by reports dated June 24, 2008 and July 10, 2008 and by testimony at the public hearings, indicated that it has no objection to the proposed development provided that there are no general commercial uses in the project given the constraints of the nearby Martin Luther King intersection. DDOT’s July 10, 2008 report states that the project will provide 263 off-street parking spaces compared to the 178 spaces required by the Zoning Regulations. DDOT recommended that the Applicant provide 40 secured

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off-street bicycle racks and implement a traffic management plan. DDOT offered to work with the Applicant to coordinate traffic and roadway improvements in the area.

ANCs 8A and 8C

29. ANC 8A submitted a letter dated July 1, 2008 that attached the minutes of its July 1, 2008 meeting, and a statement signed by ANC 8A Chairperson Anthony Muhammad. The letter indicated that ANC 8A held a meeting to consider the application that was attended by a quorum of the single member district commissioners, that a majority present voted to approve a motion in support of the PUD project, and designated Anthony Muhammad to speak on behalf of ANC 8A at the hearing. The attached minutes stated the, "Commission voted to support the Sheridan Terrace project, the support also included an amendment to the project that states: The developers shall have in their possession the property that is attached to the Sheridan Project." The attached letter signed by Chairperson Muhammad stated that he was concerned about the possibility of landslides and building foundation issues as a result of the site's topography and existing storm-water systems. The statement further stated that the ANC wanted the District to hire an independent consultant to report on the site's topographic and stormwater issues and present its findings and recommendations to ANC 8A. Finally, the statement indicated that the Applicant should sign a Memorandum of Understanding ("MOU") with terms acceptable to ANC 8A, but does not indicate what those terms are.
30. ANC 8C submitted a report indicating that, at an ANC meeting held on July 9, 2008, the ANC voted to support the project but also expressing concerns about stormwater management, the use of the flex space in the apartment building, and the inability of the Applicant to agree to all of the ANC requested terms of the MOU with the Applicant. The report does not indicate what terms the ANC requested in the MOU. The report was not signed.
31. On September 29, 2008, the Applicant submitted a supplemental filing that included a description of the use of the flex space, and a final MOU signed by a representative of the Applicant, and representatives of ANCs 8A and 8C.

Public Testimony

32. Several individuals testified in support of the application. There was no opposition testimony.

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CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means for controlling development of the site in a manner consistent with the best interests of the District of Columbia. The PUD process is designed to encourage high-quality development that provides public benefits (11 DCMR § 2400.1.) and allows flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the BZA.
3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. Approval of this application is not inconsistent with the *Comprehensive Plan for the National Capital*.
5. Approval of this application is consistent with the purposes of the Zoning Regulations and the Zoning Map of the District of Columbia and will promote orderly development in conformity with the Zone Plan as a whole.
6. The PUD is within the applicable height and bulk standards of the Zoning Regulations, and the proposed height and density of buildings will not cause any adverse effect on nearby properties. The proposed residential uses are appropriate on this site, which is well served by a major arterial street, bus lines, and a nearby mass transit station. The impact of the project on the surrounding area will not be adverse, but rather will enhance and promote the revitalization of the area.
7. The development of the project is compatible with District-wide and neighborhood goals, plans and programs and is sensitive to environmental protection, public safety and other significant public objectives.
8. The Commission is required under D.C. Code §1-309.10(d) to give great weight to the issues and concerns raised in the written recommendations of the affected

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ANCs. The Commission notes that the affected ANCs 8A and 8C provided reports and testified in support of the application. The report submitted by ANC 8C was unsigned, but the Commission nonetheless will address the issues and concerns raised in report.

- Both ANCs expressed concerns about the topography of the site and related issues of stormwater management, and ANC 8A recommended that the District hire an independent consultant to report on the site's topographic and stormwater issues and present its findings and recommendations to ANC 8A. The Applicant submitted evidence that its site design and new stormwater management measures are adequate to meet the needs of the PUD site. The addition of such a condition would not mitigate any adverse impact and, therefore, is not appropriately included in this Order. Nor does the Commission believe there is a potential for such adverse impacts because it believes that the related issues and concerns that gave rise to ANC 8A's concern about these issues have been addressed by the Applicant.
 - Both ANCs also expressed a concern that the Applicant completes the MOU with the terms sought by ANCs. The Commission notes that the Applicant submitted an MOU signed by the developer and both ANCs with its September 29, 2008 supplemental filing. The record does not contain information to indicate whether the signed MOU contained all the terms sought by the ANCs. However, the Commission concludes that because the MOU was signed by both ANCs, the issues and concerns underlying the terms sought by the ANCs were sufficiently addressed by the agreement.
 - ANC 8A expressed a concern that the PUD did not include all the property commonly understood to comprise Sheridan Terrace. The Commission notes that the Applicant expanded the PUD site by submitting applications to include Lots 961, 965, 967, and 969 in Square 5872 on July 24, 2008 into the PUD, and believes that this addressed the ANC's concern. In any event, the boundary of a PUD site is based upon the area within which all PUD-related improvements are to be constructed.
 - ANC 8C expressed a concern that the use of the flex space was not defined. The Commission believes this concern was addressed by the Applicant's supplemental filings that fully described how the use of the space would be programmed.
9. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, as amended.

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DECISION

In consideration of the Findings of Fact and Conclusions of Law stated herein, the Zoning Commission orders **APPROVAL** of the consolidated PUD for property bounded generally by Sheridan Road, S.E., Pomeroy Road, S.E., and Howard Road, S.E., specifically Lots 61-66 in Square 5869, Lots 49-56, 131-135, 940, 956, 958, 961, 963, 965, 967, 969, 971, and 972 in Square 5872. This approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the site plan and architectural and landscape plans submitted as Exhibits 51 and 64 in the record of this case, and as modified by the guidelines, conditions, and standards of this Order.

2. The project shall be developed with an apartment building to include ground floor community-serving space, townhomes and four-unit walk-up residential buildings, accessory parking, and open space as depicted on the approved plans. No general commercial retail uses are permitted. In accordance with the plans cited above, the approved PUD shall consist of a total of 344 dwelling units, distributed as follows by building type:

(a) An apartment building	104
(b) Single-family Stacked Townhouses	68
(c) Single-family Townhouses	116
(d) Grandhomes, with four units in each of the 14 buildings	<u>56</u>
Total dwelling units	344

3. The maximum building height in the project shall be 65 feet for the apartment building, 55 feet for the townhomes, and 55 feet for the four-unit walk-up buildings and the maximum aggregate gross floor area shall be 1.05 FAR.

4. Approximately 32% of the dwelling units will be reserved for and made affordable to households having 60% or less of Area Median Income, and approximately 35% will be moderate-income units reserved for and made affordable to households having incomes between 60% and 80% percent of AMI in accordance with the requirements of the public agencies providing financial subsidies for this purpose.

5. There shall be a minimum of 263 off-street parking spaces provided in the project.

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6. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - (a) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;
 - (b) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including window frames, glass types, belt courses, sills, bases, cornices, railings, roofs (i.e., substitute pitched for flat roofs and vice-versa), and architectural embellishments trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
 - (c) To vary the location of the affordable units within the project so long as they are evenly disbursed throughout the site; and
 - (d) To vary the location of parking spaces on the PUD site so long as the overall number of spaces is not reduced.
7. The Applicant shall execute a Certified Business Enterprise Utilization Agreement with the District of Columbia Office of Local Business Development to ensure minority vendor participation prior to the issuance of a final order.
8. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct and use the subject property in accordance with this Order, or amendment thereof by the Zoning Commission.
9. The PUD related map amendment shall be effective upon the recordation of the covenant discussed in Condition No. 8, pursuant to 11 DCMR § 3028.9.
10. This final PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, the Applicant shall file for a building permit as specified in 11 DCMR §§ 2408.8 and

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2409.1. Construction shall start within three (3) years of the effective date of this Order.

11. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977 (D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq.)(“Act”). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sexual discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

On September 8, 2008, upon the motion of Vice Chairman Jeffries, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Gregory N. Jeffries, Curtis L. Etherly, Jr., Peter G. May, and Michael G. Turnbull to approve).

On November 10, 2008, upon the motion of Commissioner Turnbull, as seconded by Commissioner May, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Gregory N. Jeffries to approve by absentee ballot; 3rd Mayoral appointee position vacant, not voting).

In accordance with the provisions of 11 DCMR 3028, this Order shall become final and effective upon publication in the *D.C. Register*, that is, on _____.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-13**

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**Consolidated Planned Unit Development and Related Zoning Map Amendment
Marriott International, Inc. – Square 370, Lot 26 (formerly, Lots 18, 21, 22, 24, 801
through 806, 830 through 839, 843, 845 and private alley)**

February 23, 2009

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on November 24, 2008, to consider an application from Marriott International, Inc., on behalf of the Washington Convention Center Authority and the District of Columbia, the owners of Square 370, Lot 26 (formerly Lots 18, 21, 22, 24, 801 through 806, 830 through 839, 843 and 845 and a private alley), for consolidated review and approval of a planned unit development ("PUD"), related map amendment, and air space development in order to construct a hotel on the subject property. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On May 1, 2008, Marriott International, Inc. ("Marriott"), on behalf of the Washington Convention Center Authority and the District of Columbia (collectively, the "Applicant"), filed an application with the Commission for the consolidated review and approval of a PUD, related map amendment, and air space development for Square 370, Lot 26 (the "Property").
2. By letter dated July 22, 2008, the Applicant amended its application to request the concurrent consideration of an air space development pursuant to the District of Columbia Public Space Utilization Act, approved October 17, 1968 (82 Stat. 1166; D.C. Official Code § 10-1121.01 *et seq.*) and § 3010.2(c) of the Zoning Regulations for approval of improvements in the public space below Massachusetts Avenue, L Street, and 9th Street. The Commission consolidated the PUD, map amendment, and air space development applications so that they were heard together at a single hearing.
3. The Property is located in the northwest quadrant of Washington, D.C. and is adjacent to Mount Vernon Square. The Property consists of approximately 82,887 square feet of land area and is bounded by L Street on the north, 9th Street on the east, Massachusetts Avenue on the south, and 10th Street on the west. The western portion of the Property is zoned DD/C-2-C and the eastern portion of the Property is zoned DD/C-3-C. With the map amendment requested as part of the application, the entire Property would be in the DD/C-3-C Zone District.

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4. The Applicant proposes to construct the Marriott Marquis Washington Convention Center Headquarters Hotel (the "Hotel") on the Property, which will consist of approximately 751,832 square feet of gross floor area and approximately 1,166 guest units. The Hotel will have a maximum density of approximately 9.3 FAR and a maximum building height of 130 feet. An underground parking garage will occupy the two lowest levels of the Hotel and accommodate approximately 400 valet-parked vehicles.
5. At its public meeting held on July 14, 2008, the Commission voted to schedule a public hearing on the PUD and map amendment applications. On July 28, 2008, the Commission voted to include the air space development application as part of the proceedings.
6. On August 8, 2008, the Applicant submitted a Prehearing Statement, along with revised architectural plans and elevations (respectively Exhibits 17 and 18). The Prehearing Statement provided additional information requested by the Office of Planning ("OP") and the Commission, including more information regarding use of public space; details of the proposed landscaping and streetscape improvements; refined elevations; clarification of the project's sustainable features; and a summary of the Applicant's community outreach efforts, which included meeting with Advisory Neighborhood Commission ("ANC") 2C in September, 2008. The Prehearing Statement also discussed the approval sought under the Public Space Utilization Act and the Historic Preservation Review Board's review of the application.
7. Notice of the public hearing was published in the *D.C. Register* on September 12, 2008 at 55 DCR 9730. At least 40 days before the hearing, the Commission mailed notice of the public hearing to all property owners within 200 feet of the project, ANC 2F, the single-member district representative of ANC 2F06, and forwarded notice of the public hearing to the D.C. Public Library. At least 40 days before the public hearing, the Applicant posted notice of the public hearing on the Property.
8. On September 24, 2008, the Applicant submitted a supplement to the traffic report filed with the original application and a traffic management plan for the project, both of which are marked as Exhibit 24 of the record in this case.
9. On October 31, 2008, Gregory A. O'Dell, on behalf of the Washington Convention Center Authority, submitted a letter to the Commission, urging the Commission's support of the PUD application (Exhibit 26).
10. On November 3, 2008, the Applicant submitted supplemental prehearing materials (Exhibits 27, 28, and 29). The supplemental prehearing materials included revised plans, information regarding the Public Space Utilization Act along with a copy of the Applicant's application to the Building and Land Regulation Administration, and an updated list of the Applicant's community outreach meetings.

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11. On November 4, 2008, the Applicant filed with the Commission a letter from Neil Albert, the Deputy Mayor for Planning and Economic Development, in support of the PUD application (Exhibit 30).
12. The Washington Convention Center Authority Advisory Committee ("WCCAAC") submitted a letter in support of the application on November 18, 2008. WCCAAC's letter (Exhibit 32) states that the Applicant has participated in several briefings and presentations to the community (including representatives of ANC 2C) providing details of the proposed development, and that the WCCAAC supports and recommends that the Commission approve the project.
13. On November 20, 2008, ANC 2F submitted a letter in support of the application (Exhibit 34). The letter, dated November 18, 2008, indicates that at a duly noticed public meeting on June 4, 2008, and with a quorum present, ANC 2F unanimously approved the concept, design and massing of the hotel project and the PUD application. ANC 2F recommended that the Commission approve the PUD application.
14. The Commission held a public hearing on the application on November 24, 2008. The parties to the case were the Applicant and ANC 2F, the ANC within which the Property is located.
15. Four principal witnesses testified on behalf of the Applicant at the public hearing: Steven Siegel from the Office of the District of Columbia Deputy Mayor for Planning and Economic Development; Marlene L. Johnson, Esq., for the Washington Convention Center Authority; Norman Jenkins of Marriott; and Robert Neal of Cooper Carry architects. Louis Slade of Gorove/Slade Associates, Inc. and Randolph Peterson of A. Morton Thomas & Associates, Inc. also testified on behalf of the Applicant. Based upon their professional experience, as evidenced by the resumes submitted for the record, Mr. Neal, Mr. Peterson, Mr. Slade were qualified by the Commission as experts in their respective fields. Craig Atkins of Lee & Papa and Associates, Inc. was also qualified as an expert, but did not testify at the hearing.
16. OP testified in support of the project.
17. Alexander M. Padro, as the Executive Director of Shaw Main Streets and single-member district Commissioner for ANC 2C01, testified that the community was supportive of the project, but dissatisfied with the community benefits and amenities package proffered in connection with the PUD. A letter from Shaw Main Streets representing the same was submitted to the Commission at the public hearing (Exhibit 38). Mr. Padro further testified that ANC 2C had taken no position on the application.
18. Deanna Brown and Virginia Lee of ONE DC Community Development Corporation testified in opposition of the application based on their belief that the project did not provide a sufficient level of public benefits and amenities.

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19. At the public hearing, a letter from Emmaus Services for the Aging was filed. The letter (Exhibit 39) expresses dissatisfaction with the community benefits and amenities package proffered in connection with the PUD.
20. At the public hearing on the application, the Applicant submitted a PowerPoint presentation (Exhibit 40) and a booklet (Exhibit 41). The booklet contains a revised traffic management plan for the project, an addendum to the traffic impact statement filed September 24, 2008, and a list of the PUD community benefits and amenities.
21. On December 22, 2008, the Applicant filed a post-hearing submission (Exhibit 45), which included revised architectural drawings and elevations (Exhibit 45A), a discussion on the atrium skylight enclosure, including photographic examples (Exhibits 46-53); the construction management plan for the project (Exhibit 54); a summary of the monetary contribution to neighborhood organizations (Exhibit 55); and an estimate of Marriott's in-kind contribution to a job training program that will be implemented in connection with the PUD (Exhibit 45).
22. At its public meeting held on January 12, 2009, the Commission took proposed action to approve, with conditions, the application and plans that were submitted into the record. The Commission also requested the Applicant enlarge the drawings on some of the sheets in the revised architectural drawings filed on December 22, 2008 and to clarify the building materials depicted on the sheets.
23. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. NCPC, by action dated February 5, 2009, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.
24. On February 13, 2009, the Applicant filed with the Office of Zoning a consolidated set of all of the architectural drawings and elevations that were reviewed and approved by the Commission, which include the enlarged drawings requested by the Commission at the January 12, 2009 public meeting (the "Plans"). The Plans are marked as Exhibit 60A of the record of this case.
25. At a public meeting held on February 23, 2009, the Commission noted that, after the record was closed, it received letters dated February 19, 2009, from the East Central Civic Association and February 23, 2009 from the Applicant. The Commission instructed Office of Zoning staff to return the letters.
26. Nevertheless, as a result of the receipt of the letters, the Commission became aware that it had not mailed notice of the public hearing to ANC 2C, whose boundaries end less than 200 feet and across the street from the Property. Such notice is required by 11 DCMR § 3015.3 (c). For the reasons stated in the following two paragraphs, the Commission

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decided to waive this requirement, finding that, “the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.” (11 DCMR § 3000.8.)

27. First, as to prejudice, ANC 2C was privy to other forms of notice of the hearing, including notice in the *D.C. Register* and notice posted on the Property, which is located just across the street from its boundary. The Commission concludes such notice was received by virtue of the appearance of Alexander Padro, single-member district Commissioner for ANC 2C01, at the hearing and his testimony that the ANC was aware of the hearing and had decided not to take a position on the application.
28. Second, as to whether the waiver is prohibited by law, the Commission is required to give 30 days written notice, excluding Saturdays, Sundays, and legal holidays of the requested zoning changes by first-class mail to each affected ANC. (D.C. Official Code Sec. 1-309.10(b).) The D.C. Court of Appeals has held that the affected ANC is not just the one in which project is located, but is also any ANC with boundaries that end across the street from a property subject to a zoning action. *Neighbors United for a Safer Community v. District of Columbia Bd. Of Zoning Adjustment*, 647 A.2d 793, 797 (D.C. 1994). However, as just noted, it is clear that ANC 2C, though not having received notice of the zoning change by mail, received such notice by other means, and decided to take no position. In this precarious economic environment, it would serve neither the ANC 2C or its constituents to delay the final consideration of a project of this size and importance just to inform the ANC about something it already knew about and considered.
29. Therefore, the Commission proceeded with final action to approve the application at its public meeting held on February 23, 2009.

The PUD Project

30. In 2006, the Council of the District of Columbia enacted the New Convention Center Hotel Omnibus Financing and Development Act of 2006, effective September 19, 2006 (D.C. Law 16-163; D.C. Official Code § 10-1221.01 *et seq.*). The legislation authorized, among other things, bond financing for the proposed Convention Center Hotel project, leasing of land in Square 370 by the District and the Washington Convention Center Authority to a private development team led by Marriott and tax increment financing to support the development of the Hotel.
31. Square 370 is an irregularly shaped parcel adjacent to Mount Vernon Square, N.W., and is bounded by 9th Street on the east, 10th Street on the west, L Street on the north and Massachusetts Avenue on the south. A Pepco substation is located at the northwest section of Square 370, at the intersection of 10th and L Streets. An abandoned building is located on the northeast corner of the square, at the intersection of 9th and L Streets. The American Federation of Labor Building, a landmark designated on the District of Columbia Inventory of Historic Sites and the National Register of Historic Places, is

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situated on the southeast corner of Square 370 at Massachusetts Avenue and 9th Street. The balance of Square 370 is improved as a paved parking lot. A 20-foot wide private alley extends from 9th Street into the square. The Property consists of approximately 82,887 square feet, and includes all of Square 370, except Lot 846, where the Pepco substation is located.

32. The Property is designated in the mixed-use High-Density Residential and High-Density Commercial land use category on the District of Columbia Comprehensive Plan Future Land Use Map, and is designated in a Land Use Change area on the District of Columbia Comprehensive Plan Generalized Policy Map.
33. The Applicant proposes to construct the Marriott Marquis Washington Convention Center Headquarters Hotel on the Property, which will consist of between 1,150 to 1,182 guest units. The Hotel will have a maximum density of approximately 9.3 FAR and a maximum building height of 130 feet. An underground parking garage will occupy the two lowest levels of the Hotel and accommodate approximately 400 valet-parked vehicles. The PUD includes subsurface improvements within the public space, including, but not limited to, an underground pedestrian tunnel that connects to the Washington Convention Center on the east side of 9th Street, an underground loading dock area below 9th Street, and parking, meeting space, mechanical equipment, and other hotel uses (including, but not limited to, stairs, escalators, and kitchen space) below Massachusetts Avenue and L Street.

Matter-of-Right Development under Existing and Proposed Zoning

34. The Property is currently split-zoned DD/C-2-C and DD/C-3-C. It is also located in the housing priority area of the Downtown Development (“DD”) Overlay. As part of the application, the Applicant seeks to rezone the entire Property to the DD/C-3-C Zone District. Thus, the development of the Property would be subject to the DD Overlay District, C-3-C Zone District, and PUD regulations.
35. The project will comply with all area requirements for properties mapped in a C-3-C Zone District not modified by the provisions of the DD Overlay.
36. The proposed density of 9.3 FAR does not exceed the matter-of-right 9.5 FAR limit applicable to DD/C-3-C properties located in the housing priority area, 11 DCMR §§ 1706.2 and 1706.5. Such properties are also subject to a requirement to provide a minimum 3.5 FAR of residential uses, either located on-site or accounted for off-site through a combined lot development, 11 DCMR § 1706.5 (b). This project will not be required to do either as a result a text amendment recently approved by the Commission in Z.C. Case No. 08-05.
37. The proposed height of 130 feet is also within the matter-of-right limits of the DD District, which for DD/C-3-C properties is, “that permitted by the Act to Regulate the

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Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6.601.09 (2001)).”

Development Incentives and Flexibility

38. Other than the PUD-related map amendment, the Applicant seeks no development incentives nor does it seek flexibility to deviate from the requirements of the Zoning Regulations.

Public Benefits and Amenities

39. The following benefits and amenities will be created as a result of the PUD:
- a. Urban Design, Architecture, Landscaping and Open Space - 11 DCMR § 2403.9(a). The construction of the Hotel will provide a formal presence on Massachusetts Avenue, a community presence on 9th Street, and a neighborhood/residential presence on L Street. The architectural design and elements of the Hotel will reflect an appropriate level of modernity while respecting the traditional Washington architecture and the L'Enfant planning parameters. The building façades will have articulations that break up the massing, similar to the Washington Convention Center, so as to not overwhelm the existing urban scale and fabric. The urban building fabric will be enhanced with high quality exterior materials such as stone and glass, while high quality hardscape materials and patterns will enhance the streetscape. Finally, substantial glass exposure at the street level, coupled with sumptuous interior finishes and high level of activity will animate the street from within the Hotel.
 - b. Site Planning and Efficient and Economical Land Utilization - 11 DCMR § 2403.9(b). The design of the proposed PUD includes a number of site planning and efficient and economical land utilization features. First, an internal underground concourse is planned to connect the Hotel to the Washington Convention Center, which will reduce excessive on-street pedestrian movement at high traffic periods. Second, traffic impacts will be mitigated because truck deliveries for the Hotel dock are planned to occur from a loading area below 9th Street, and buses and taxis will queue on L Street rather than 9th Street or Massachusetts Avenue. Third, the design and layout of the PUD will visually enhance the experience on Massachusetts Avenue by masking the Pepco substation at 10th and L Streets.
 - c. Effective and Safe Vehicular and Pedestrian Access, Transportation Management Measures, Connections to Public Transit Service, and Other Measures to Mitigate Adverse Traffic Impacts - 11 DCMR § 2403.9(c). An underground pedestrian concourse is planned to connect the Hotel to the Washington Convention Center, which will reduce excessive on-street pedestrian movement at high traffic periods.

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Traffic impacts will be mitigated because truck deliveries for the Hotel will occur at a below-grade loading dock; and buses and taxis will queue on L Street rather than 9th Street or Massachusetts Avenue. The Applicant had requested DDOT to change L and 10th Streets from one-way to two-way operations in order to provide more efficient traffic circulation around the perimeter of the site. The Hotel will have two main entries - one on Massachusetts Avenue and one on L Street with a bus lay-by. This allows passenger vehicles to be segregated from charter buses and commercial buses dropping off hotel guests. The Hotel will implement the Traffic Management Plan prepared by Gorove Slade Associates, dated November 17, 2008, included as part of Exhibit 41 of the record in this case, which includes provisions for taxi management and valet parking operations.

- d. Historic Preservation of Private or Public Structures, Places, or Parks - 11 DCMR § 2403(d). The PUD incorporates the historic American Federation of Labor Building. The exterior of the building will be restored, and the interior will be completely renovated to house 42 distinctive guestrooms and a public restaurant/bar at the street level.

- e. Employment and Training Opportunities - 11 DCMR § 2403.9(e). Marriott will facilitate the D.C. Citizens' Job Program at an estimated in-kind cost of \$90,000. The "New Convention Center Hotel Omnibus Financing and Development Act of 2006" earmarks \$2 million in bond financing for the job training program provided that, among other things, (a) the job program begins no later than two years before the completion of the construction of the New Convention Center Hotel; (b) the program provides for the hiring and training of citizens of the District for permanent employment positions in the Washington Convention Center Hotel; and (c) the program is designed to provide job-specific training that meets the specifications of positions to be filled at the Washington Convention Center Hotel, and provides that District citizens who successfully complete the training be given first consideration for the jobs for which they have been trained. The Hotel is expected to generate 1,000 to 2,000 permanent new jobs and 1,500 to 1,800 construction related temporary jobs. Of the permanent new jobs generated, approximately 10% are classified as management positions. The Hotel workforce will include associates focused on guest services, sales, engineering, finance, housekeeping, banquets, and various attendants and servers. Additionally, the Applicant will voluntarily enter into an agreement to participate in the Department of Employment Services ("DOES") First Source Employment Program to promote and encourage the hiring of District of Columbia residents in the construction and operation of the project, and the Applicant has entered into a Certified Business Enterprise Agreement with the Office of Local Business Development ("OLBD") to use the resources of the OLBD to utilize local business enterprises in the development of the project.

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- f. Environmental Benefits - 11 DCMR § 2403.9(h). The Hotel will achieve LEED Silver status by incorporating protocols in the five categories of the USGB LEED certification process: (i) sustainable sites, (ii) water efficiency, (iii) energy and atmosphere, (iv) materials and resources, and (v) indoor air quality. The project will include landscape elements to promote the following green building objectives: (i) stormwater design/quantity control through the use of low impact development ("LID") tree pits and pervious paving; (ii) heat island effect, non-roof through planting a double row of trees along Massachusetts Avenue; and (iii) water efficient landscaping through the use of a stormwater management cistern, drip irrigation system, and native or adapted plan species.
- g. Uses of Special Value to the Neighborhood or the District as a Whole - 11 DCMR § 2403.9(i). The PUD would be of special value to the District, generally, by (i) providing lodging and conference facilities that support the Washington Convention Center, (ii) providing additional lodging options that further the City's hospitality and tourism industry, and (iii) preserving the landmark American Federation of Labor Building. The proposed PUD also has special value to the Mount Vernon Square neighborhood because it will replace an underutilized site and abandoned building with an exemplary, well-designed convention headquarters hotel that promotes the continued redevelopment of this section of the City. Also, the retail and restaurants at the perimeter of the ground floor of the Hotel will provide additional services to the neighborhood and enliven the streetscape.
- h. Additional Contribution to Shaw Community. The Applicant will contribute \$50,000 to various non-profit organizations in the Shaw community. The funds will be used to support senior citizens' nutritional programs, employment training in the healthcare industry, medical screenings for low-income Shaw residents, meals for the homeless and low-income families, and similar services provided by the non-profit organizations.

Consistency with the District Elements of the Comprehensive Plan

40. The Property is designated in the mixed-use High-Density Residential and High-Density Commercial land use category on the District of Columbia Comprehensive Plan Future Land Use Map. The High-Density Residential designation is used to define neighborhoods and corridors where high-rise apartment buildings are the predominant use, and the corresponding zones districts are generally R-5-D and R-5-E (although other zones may apply). The High-Density Commercial designation is used to define the central employment district of the City and other major office employment centers on the downtown perimeter. It is characterized by office and mixed office/retail buildings greater than eight stories in height, although many lower scale buildings (including

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historic buildings) are interspersed. The corresponding zone districts are generally C-2-C, C-3-C, C-4, and C-5, although other districts may apply.

41. The Commission finds that the Applicant's proposal to construct a hotel on the Property is consistent with the Future Land Use Map's designation of the Property. The western portion of the Property is zoned DD/C-2-C and the eastern portion of the Property is zoned DD/C-3-C. Under the application, the entire property would be in the DD/C-3-C Zone District. One of the purposes of the C-3-C Zone District is to encourage a diversity of compatible land uses that may include both residential and commercial uses, which is also consistent with the stated principle of the mixed-use designation of the Property.
42. The Property is designated in a Land Use Change Area on the District of Columbia Comprehensive Plan Generalized Policy Map. The guiding philosophy in these areas is to encourage and facilitate new development and to promote the adaptive reuse of existing structures. As Land Use Change Areas are redeveloped, the District aspires to create high quality environments that include exemplary site and architectural design and that are compatible with and do not negatively impact neighborhoods. The Commission finds that the proposed PUD and zoning map amendment are consistent with this philosophy because the development will have a positive impact on the surrounding area by virtue of the exceptional site and architectural design. The proposed PUD's design carefully considers the nearby uses and, accordingly, will not have an unacceptable impact on the area. Moreover, the proposed PUD will have no unacceptable impact on existing or future traffic conditions.
43. The Commission finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:
 - a. Policy LU-1.4.1: Infill Development. Encourage infill development on vacant land within the City, particularly in areas where there are vacant lots that create "gaps" in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern.
 - b. Policy ED-2.3.1: Growing the Hospitality Industry. Develop an increasingly robust tourism and convention industry, which is underpinned by a broad base of arts, entertainment, restaurant, lodging, cultural, and government amenities.
 - c. Policy ED-2.3.4: Lodging and Accommodation. Support the development of a diverse range of hotel types, serving travelers with varying needs, tastes, and budgets. New hotels should be encouraged both within central Washington and in outlying commercial areas of the City, particularly in areas that presently lack quality accommodation.

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- d. Policy HP-2.4.1: Rehabilitation of Historic Structures. Promote appropriate preservation of historic buildings through an effective design review process. Apply design guidelines without stifling creativity, and strive for an appropriate balance between restoration and adaptation as suitable for the particular historic environment.
- e. Policy HP-2.4.2: Adaptation of Historic Properties for Current Use. Maintain historic properties in their original use to the greatest extent possible.
- f. Policy HP-2.4.3: Compatible Development. Ensure that new construction, repair, maintenance, and improvements are in scale with and respect the historic context through sensitive siting and design and the appropriate use of materials and architectural detail.
- g. Policy HP-2.4.4: Suitability to the Historic Context. Apply design standards in a manner that accounts for different levels of historic significance and different types of historic environments. Encourage restoration of historic landmarks while allowing enhancements of equivalent design quality, provided such enhancements do not damage the landmark. Allow greater flexibility where the inherent character of historic properties can accommodate greater intervention or more dramatic new design, for example, in non-residential areas and in areas without a significant design pattern.
- h. Policy HP-2.4.5: Protecting Historic Building Integrity. Protect historic buildings from demolition whenever possible, and protect the integrity of whole buildings.
- i. Policy CW-1.1.10: Central Washington Hotels and Hospitality Services. Encourage the development of additional hotels in central Washington, including around the new Convention Center. A range of hotel types, including moderately priced hotels, and hotels oriented to family travelers as well as business travelers should be encouraged. Hotels generate jobs for District residents and revenues for the general fund and should be granted incentives when necessary.
- j. Policy CW-2.4: Mount Vernon District. Mount Vernon Square itself was designed to be a focal point among Washington's ensemble of great civic landmarks. Its focus is the 1902 former Carnegie Library building, an elegant historic structure that is now in use by the Washington Historical Society. Facing the north edge of the Square is the 2.3 million square foot Washington Convention Center, completed in 2003. To the southwest, the now vacant site of the former convention center is awaiting redevelopment. Immediately northwest of the Square, a major convention hotel is planned. Large-scale office buildings occupy other sides of the Square, framing it as potentially great public space.

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- k. Policy CW-2.4.3: Convention Center Area Land Uses. Encourage land uses around Mount Vernon Square that capitalize on the presence of the Washington Convention Center. Such uses include hotels, restaurants, retail, and entertainment uses. Convention-related hotel construction should be focused on vacant or underutilized land immediately adjacent to the Washington Convention Center to minimize impacts on the surrounding neighborhood.
- l. Action CW-2.4.B: Convention Center Hotel. Develop a major convention center hotel in close proximity to the Washington Convention Center. The Hotel should be sited and designed to complement adjacent uses and add activity and aesthetic value to the Mount Vernon Square neighborhood.

Air Space Development

44. The PUD includes subsurface improvements within the public space, including, but not limited to, an underground pedestrian tunnel that connects to the Washington Convention Center on the east side of 9th Street, an underground loading dock area below 9th Street, and parking, meeting space, mechanical equipment, and other hotel uses (including, but not limited to, stairs, escalators, and kitchen space) below Massachusetts Avenue and L Street.
45. Under § 5 of the District of Columbia Public Space Utilization Act (D.C. Official Code § 10-1121.04), the Commission must, after public hearing and after securing the advice and recommendations of the National Capital Planning Commission, determine the uses to be permitted in the airspace and establish regulations applicable to the use of such airspace consistent with regulations applicable to the abutting privately owned property, including limitations and requirements respecting the height of any structure to be erected in such airspace, off-street parking and floor area ratios applicable to such structure, and easements of light, air, and access.
46. The Applicant and the District desire to construct portions of the Hotel, including parking and loading area areas and auxiliary function space beneath the surface of adjacent public space.
47. Because the “air space” improvements are completely underground, have no impact external to the project, and must be built in accordance with the plans approved in this Order and used in accordance with its conditions, the Commission finds it unnecessary to separately regulate the use proposed for the space.

Office of Planning ("OP") Report

48. By report dated July 3, 2008 (Setdown Report; Exhibit 13), OP recommended that the Commission schedule a public hearing on the application.

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49. By report dated November 14, 2008 (Public Hearing Report; Exhibit 31), OP recommended final approval of the application. OP indicated that the application will further a number of the elements and principles of the Comprehensive Plan and is not inconsistent with the Comprehensive Plan's policies and land use maps. OP also indicated that the proposed hotel and the amenities identified by the Applicant would be of benefit to the Mount Vernon Square neighborhood as well as the District overall. OP also supported the proposed DD/C-3-C designation and indicated that the proposed zoning is not inconsistent with the Comprehensive Plan's Future Land Use designation for high density residential and commercial uses and the District's goal of developing a convention center hotel on the site.
50. By report dated January 2, 2009 (Supplemental Report; Exhibit 56), OP recommended that the Commission approve the application, as amended by the post-hearing documents filed by the Applicant. The Supplemental Report states that the redesign of the building resolves prior concerns regarding the overall building height, and the revised drawings clarify the use of the areas within the building that exceed 130' in height. The Supplemental Report also notes that the Applicant appeared before the Public Space Committee ("PSC") on December 18, 2008, and the PSC granted conditional approval with some modifications. Overall, the PSC was supportive of the project, but deferred final approval of some items to subcommittees like the Street Light Division of DDOT, and encouraged the developer to work with the Urban Forestry Administration to coordinate all tree removals and new plantings.

District of Columbia Department of Transportation ("DDOT") Report

51. DDOT submitted a memorandum dated November 17, 2008 (Exhibit 33), recommending that the project be approved. DDOT indicated in its report that the transportation impacts of the development will not compromise the proper-functioning network that already exists. DDOT also noted that the Applicant's request that DDOT change 10th and L Streets to two-way operations would, if implemented, increase neighborhood access, and the loading underground would decrease potential impacts on traffic. The Commission notes that the proposed change can not be effectuated until DDOT takes the appropriate administrative action.

Response to Contested Issues

52. In response to the concerns raised by Shaw Main Street, ONE DC Development Corporation, and Emmaus Services for the Aging, the Applicant amended its community benefits and amenities package to include a monetary contribution of \$50,000 to various non-profit organizations in the Shaw community. The funds will be used to support senior citizens' nutritional programs, employment training in the healthcare industry, medical screening for low-income Shaw residents, meals for the homeless and low-income families, and similar services provided by the non-profit organizations. The

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Commission finds that this additional benefit is reasonable in light of the PUD's impact to the area and the development flexibility requested.

53. In the plans that were filed as part of the post-hearing submission, the Applicant has reduced the height of the atrium skylight cover so that it does not exceed the height of the roof structure penthouse at 18' 6". The skylight cover will be mostly surrounded by the roof structures for mechanical equipment, stair towers and elevator overrides and will not be visible from the Massachusetts Avenue or L Street frontages.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk and density standards of the Zoning Regulations. The uses for this project are appropriate for the Property. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.

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8. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Property in conformity with the entirety of the District of Columbia Comprehensive Plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. In accordance with § 5 of the District of Public Space Utilization Act D.C. Official Code § 10-1121.04), the Commission, after public hearing and after securing the advice and recommendations of NCPC, has determined the uses to be permitted in the airspace below Massachusetts Avenue, 9th Street, and L Streets, N.W., adjacent to the private property included within the PUD. As noted earlier, the Commission finds it unnecessary to separately regulate the use of the space, but subjects it to the controls of this Order applicable to the project as a whole.
10. The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to any issues or concerns raised in the written recommendations of the affected ANC. In this case, ANC 2F voted unanimously to approve the PUD application. (See Exhibit 34.) The Commission has given ANC 2F's recommendation great weight in approving this application. ANC 2C did not submit written recommendations to the Commission.
11. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP's recommendations. OP recommended approval of the application. The Commission has given OP's recommendation great weight in approving this application.
12. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review and approval of a planned unit development ("PUD"), related map amendment, and air space development, subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed substantially in accordance with the Plans, as prepared by The CooperCarry – TVS Collaborative, dated February 13, 2009, marked as Exhibit 60A in the record (the "Plans"); and as further modified by the guidelines, conditions and standards herein.

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2. The PUD shall have between 1,150 and 1,182 guest units and a maximum density of approximately 9.3 FAR.
3. The maximum height of the building shall be 130 feet, not including roof structures, which may exceed the permitted height by no more than 18 feet, 6 inches.
4. The project shall include an underground parking garage that accommodates approximately 400 valet-parked vehicles.
5. In the loading dock area below 9th Street, the PUD shall provide a minimum of three loading berths with a depth of 55 feet, three loading berths with a depth of 30 feet, and one 20-foot wide service/delivery loading space.
6. The Applicant shall also have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the building.
 - b. To vary the interior of the parking levels, including the location and arrangement of parking spaces, so as to provide valet parking for no less than the minimum number of spaces required for a hotel in the C-3-C Zone District.
 - c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.
 - d. The Applicant shall have the flexibility to vary the exterior design, signage, landscaping, and public space improvements in accordance with comments received from the Historic Preservation Review Board or its staff.
7. No base building permit shall be issued for this PUD and the PUD-related map amendment shall not become effective until the Applicant has submitted to the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA") a fully-executed First Source Employment Agreement with the Dept. of Employment Services and a fully-executed Certified Business Enterprise Agreement with the Office of Local Business Development.

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8. The Applicant will contribute \$50,000 to one or more non-profit organizations in the Shaw community. Each contribution shall be conditioned upon the recipient spending the funds solely to support senior citizens' nutritional programs, employment training in the healthcare industry, medical screenings for low-income Shaw residents, meals for the homeless and low-income families, or similar services. No base building permit shall be issued for the PUD unless:
 - a. The Zoning Administrator has received a written statement from each recipient indicating the amount of the contribution received and committing to spend the contribution only for the purposes described above; and
 - b. The total amount of monies acknowledged as having been received by the recipients is at least \$50,000.
9. No base building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicants and all successors in title to construct on and use the Subject Property in accordance with this Order or amendment thereof by the Zoning Commission.
10. No certificate of occupancy shall issue until the exterior of the historic American Federation of Labor Building is restored and the interior completely renovated to house approximately 42 guestrooms and a public restaurant/bar at the street level.
11. The PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three (3) years of the effective date of this Order.
12. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicants to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

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On January 12, 2009, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the application at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to approve; the third Mayoral appointee position vacant, not voting).

On February 23, 2009, upon the motion of Vice Chairman Jeffries, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to adopt; the third Mayoral appointee position vacant, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on _____.

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